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SENATE BILL 661

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO STATE FINANCE; ALLOWING DIRECT INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO OWNED AND OPERATED FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS; PROVIDING AND QUALIFYING LIMITATIONS; PROVIDING A GROSS RECEIPTS TAX EXEMPTION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 7, Article 27 NMSA 1978 is enacted to read:

" NEW MATERIAL INVESTMENT IN FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS OWNED AND OPERATED IN NEW MEXICO. --

A. No more than three percent of the market value of the severance tax permanent fund may be invested in New Mexico fine art and fine musical instrument private equity

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1 funds under this section.

2 B. If an investment is made under this section, not
3 more than fifty million dollars (\$50,000,000) of the amount
4 authorized for investment pursuant to Subsection A of this
5 section shall be invested in any one fine art or fine musical
6 instrument private equity fund.

7 C. The state investment officer shall make
8 investments pursuant to this section only upon approval of the
9 state investment council after a review by the private equity
10 investment advisory committee. The state investment officer
11 may make an investment pursuant to this section only in a New
12 Mexico fine art or fine musical instrument private equity fund
13 that:

14 (1) is owned, managed and operated in New
15 Mexico;

16 (2) has shown to the satisfaction of the state
17 investment council that it is a reputable investment company
18 with sufficient expertise in fine art or fine musical
19 instruments;

20 (3) has agreed that a majority of the firm's
21 employees will be New Mexico residents; and

22 (4) meets the following conditions:

23 (a) representations and warranties made
24 in the fund's private equity offering memorandum, its
25 subscription agreement and any other offering document are

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1 approved by the state investment council;

2 (b) the fund manager will provide to the
3 state investment council audited statements on a quarterly
4 basis reflecting the activities of the fund; and

5 (c) all bank accounts of the fund
6 manager, whether used for operations or asset acquisition,
7 shall reside in banking institutions operating in New Mexico.

8 D. As used in this section:

9 (1) "New Mexico fine art private equity fund"
10 means any limited partnership, limited liability company or
11 corporation organized and operating in New Mexico that:

12 (a) has as its primary business activity
13 the use of funds to acquire fine art, which is defined as art
14 that has demonstrated that it has a secondary market; has
15 either been sold at auction or been produced by an artist whose
16 other work has sold at auction; and has a value in no case less
17 than two hundred fifty thousand dollars (\$250,000) or more than
18 six million five hundred thousand dollars (\$6,500,000);

19 (b) will hold these acquisitions for
20 sale opportunistically, not later than ten years from the date
21 of acquisition, with the objective of capital appreciation; and

22 (c) accepts investments only from
23 accredited investors as that term is defined in Section 2 of
24 the federal Securities Act of 1933, as amended, and rules
25 promulgated pursuant to Section 3 of that act; and

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1 (2) "New Mexico fine musical instrument
2 private equity fund" means any limited partnership, limited
3 liability company or corporation organized and operating in New
4 Mexico that:

5 (a) has as its primary business activity
6 the use of funds to acquire fine musical instruments, which are
7 defined as musical instruments that are stringed unfretted
8 instruments; were made in the seventeenth, eighteenth or
9 nineteenth century in Italy, France, Germany or England; have a
10 maker whose instruments have sold at auction; have demonstrated
11 that they have a secondary market; have a value in no case less
12 than one hundred fifty thousand dollars (\$150,000) and have a
13 value in no case more than eight million dollars (\$8,000,000);

14 (b) will hold these acquisitions for
15 sale opportunistically, not later than ten years from the date
16 of acquisition, with the objective of capital appreciation; and

17 (c) accepts investments only from
18 accredited investors as that term is defined in Section 2 of
19 the federal Securities Act of 1933, as amended, and rules
20 promulgated pursuant to that section."

21 Section 2. Section 7-27-5 NMSA 1978 (being Laws 1983,
22 Chapter 306, Section 7, as amended) is amended to read:

23 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. --The
24 severance tax permanent fund shall be invested for two general
25 purposes, to provide income to the fund and to stimulate the

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1 economy of New Mexico, preferably on a continuing basis. The
2 investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall
3 be those intended to provide maximum income to the fund and
4 shall be referred to as the market rate investments. The
5 investments permitted in Sections 7-27-5.3 through 7-27-5.5,
6 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through
7 7-27-5.26 NMSA 1978 and the investments permitted for fine art
8 and fine musical instruments provided in this article shall be
9 those intended to stimulate the economy of New Mexico and shall
10 be referred to as the differential rate investments. The
11 prudent man rule shall be applied to the market rate
12 investments, and the state investment officer shall keep
13 separate records of the earnings of the market rate
14 investments. All transactions entered into on or after July 1,
15 1991 shall be accounted for in accordance with generally
16 accepted accounting principles. "

17 Section 3. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect immediately.

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